

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-124**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Mary Lynn Brooks
Ms Jacqueline Freedman

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: May 21, 2014

ISSUE(S): Entitlement to reimbursement of chiropractic treatment expenses.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) of Manitoba Regulation 40/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on March 20, 2013. At the time of the accident, she was a passenger in a vehicle travelling through a parking lot, when another vehicle struck the right front passenger side. As a result of that accident, the Appellant complained of pain around her head, headaches, neck pain, upper back pain, shoulder pain, arm pain, mid-back pain, and numbness across the face, dizziness, nausea and fatigue. Due to the bodily injuries which the Appellant sustained in this motor vehicle accident, she became entitled

to Personal Injury Protection Plan (“PIPP”) benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated September 26, 2013, with respect to her entitlement to reimbursement of outstanding expenses for chiropractic treatment.

The Appellant initially saw [Appellant’s Chiropractor] on March 20, 2013, the day of the accident. At that time, [Appellant’s Chiropractor’s] diagnosis included post-concussion syndrome, cervical, thoracic and lumbar sprain/strain. [Appellant’s Chiropractor] indicated that Track II care may be necessary.

[Appellant’s Chiropractor] submitted a Chiropractic Track II request dated May 22, 2013. This request for Track II care was approved by MPIC’s Health Care Services, who indicated that the Appellant qualified for chiropractic care under the Track II system as she had been involved in a prior motor vehicle accident within a two year period. In a decision letter dated June 13, 2013, MPIC’s case manager advised [Appellant’s Chiropractor] that her request for Chiropractic Track 2, Phase 1 treatment had been approved.

On August 7, 2013, [Appellant’s Chiropractor] submitted a subsequent Track II report requesting coverage for Phase II chiropractic treatment. This request was reviewed by MPIC’s Health Care Services chiropractic consultant who noted that despite the treatment the Appellant had received to date, medical evidence showed there was no significant improvement in her condition. The chiropractic consultant opined that additional chiropractic treatment would not be medically required.

On August 26, 2013, MPIC's case manager issued a decision advising that there was no entitlement to further funding for chiropractic treatment beyond Track II, Phase I, to a maximum of 40 treatments including the initial assessment.

The Appellant sought an Internal Review of that decision. In a decision dated September 26, 2013, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that due to the minimal improvement in the Appellant's subjective and objective measures, additional chiropractic treatment was not likely to result in sustained or progressive improvement. Therefore, the Internal Review Officer concluded that additional chiropractic treatment for the Appellant was not medically required.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of her outstanding expenses for chiropractic treatment and whether she is entitled to reimbursement of ongoing chiropractic treatments.

Relevant Legislation:

Section 136(1)(a) provides that:

Reimbursement of victim for various expenses

[136\(1\)](#) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Section 5(a) of Manitoba Regulation 40/94 provides that:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Appellant's Submission:

The Appellant submits that as a result of the injuries she sustained in the motor vehicle accident of March 20, 2013, she continues to require chiropractic treatment. The Appellant advises that even though time has elapsed, the symptoms and pain from the accident have remained. At the appeal hearing, the Appellant confirmed that her symptoms of dizziness and nausea resolved within three months following the motor vehicle accident. However, she still has numbness in half of her face and arms from the motor vehicle accident. The Appellant also contends that she continues to experience pain in her arm, neck, shoulder and mid-back due to the motor vehicle accident. The Appellant argues that the chiropractic treatments help her with her pain levels. The Appellant claims that even though the 40 chiropractic treatments authorized by MPIC have helped her, she is still not at pre-collision condition. The Appellant wants reimbursement of the 20 chiropractic visits she has attended since funding was terminated by MPIC. Additionally, the Appellant is seeking ongoing chiropractic treatment to reduce her pain so that she can function at a reasonable pain level.

The Appellant maintains that ongoing chiropractic treatment does help. She submits that if chiropractic treatment didn't help her, she wouldn't continue to go for treatment. The Appellant argues that her recovery takes a long time. In support of her position the Appellant relies upon a report from [Appellant's Doctor] which states that "improvement may need a long time –

sometimes up to three to four years post trauma”. Relying upon [Appellant’s Doctor’s] opinion that her recovery may take a substantial amount of time, the Appellant seeks ongoing chiropractic treatment to assist her with her ongoing pain complaints.

MPIC’s Submission:

Counsel for MPIC submits that ongoing chiropractic care (beyond Track II, Phase I) was not medically required for the Appellant. Counsel for MPIC submits that the Appellant has reached maximum medical improvement with chiropractic care and that further chiropractic care cannot be deemed medically required. Counsel for MPIC argues that further chiropractic treatments will not significantly improve the Appellant’s condition. He submits that despite the 40 chiropractic treatments which the Appellant has undergone, the Appellant continues to complain of headaches and pain and soreness in her neck, arms and mid-back, with minimal improvement. Counsel for MPIC contends that the Appellant has demonstrated insignificant improvement to justify further chiropractic treatment as a medical requirement.

Counsel for MPIC argues that some other form of treatment may be useful for the Appellant and she may want to consider some other modality of treatment other than chiropractic care. In conclusion, counsel for MPIC submits that the Appellant is not entitled to funding for further chiropractic treatment. He submits that the Appellant’s appeal should be dismissed and the Internal Review decision dated September 26, 2013 confirmed.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission

finds that the Appellant is not entitled to reimbursement of outstanding and ongoing expenses for chiropractic treatment.

Reasons for Decision:

Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for chiropractic treatment:

1. the expenses must have been incurred to treat injuries sustained in a motor vehicle accident; and
2. the treatments must be “medically required”.

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that ongoing chiropractic treatment was medically required. In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead to a demonstrable improvement of the condition of the patient. The Commission finds that the medical evidence on the Appellant’s file demonstrated that there was no significant improvement in her condition. Based upon the medical evidence on the file, we find it most likely that the Appellant has indeed reached maximum therapeutic benefit from chiropractic treatment. Additionally, the evidence before the Commission did not establish that ongoing chiropractic care would provide further sustainable improvement with respect to the Appellant’s motor vehicle collision related injuries. As a result, we are unable to conclude that ongoing chiropractic treatment was medically required in this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of outstanding and ongoing expenses for chiropractic care. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated September 26, 2013 is confirmed.

Dated at Winnipeg this 12th day of June, 2014.

YVONNE TAVARES

MARY LYNN BROOKS

JACQUELINE FREEDMAN